

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

CR No. 15-4268-KG

1. ANGEL DE LEON,)

2. **JOE GALLEGOS,**)

3. **EDWARD TROUP,**)

4. LEONARD LUJAN,)

5. **BILLY GARCIA,**)

6. EUGENE MARTINEZ,)

7. ALLEN PATTERSON,)

8. **CHRISTOPHER CHAVEZ,**)

9. **JAVIER ALONSO,**)

10. **ARTURO ARNULFO GARCIA,**)

11. BENJAMIN CLARK,)

12. RUBEN HERNANDEZ,)

13. JERRY ARMENTA,)

14. **JERRY MONTOYA,**)

15. MARIO RODRIGUEZ,)

16. **TIMOTHY MARTINEZ,**)

17. **MAURICIO VARELA,**)

18. **DANIEL SANCHEZ,**)

19. GERALD ARCHULETA,)

20. CONRAD VILLEGAS,)

21. **ANTHONY BACA,**)

22. ROBERT MARTINEZ,)

23. ROY MARTINEZ, and)

24. **CHRISTOPHER GARCIA,**)

Defendants.

MOTION TO VACATE HEARING SCHEDULED FOR FEBRUARY 8, 2016
AND REQUEST FOR ADEQUATE TIME TO RESPOND TO THE
GOVERNMENT'S SEALED MOTION FOR PROTECTIVE ORDER

Defendants, Joe Gallegos, Edward Troup, Billy Garcia, Christopher Chavez, Javier Alonso, Auturo Arnulfo Garcia, Jerry Montoya, Timothy Martinez, Mauricio Varela, Daniel Sanchez, Anthony Baca, and Christopher Garcia, through counsel, and pursuant to the Fifth and Sixth Amendments to the U.S. Constitution, respectfully request that the hearing now scheduled for February 8, 2016 at 11:30 a.m. be vacated and further request adequate time to respond to the Government's Sealed Motion for Protective Order [Doc. 260]. As grounds, Defendants state as follows:

1. Background

In this case twenty-four defendants are charged by Indictment with sundry violations of 18 U.S.C. 1959(a)(1)(5)(6) and 18 U.S.C. 2 – Violent Crimes in Aid of Racketeering. [Doc. 2]. At least nineteen of these defendants are charged with capital eligible offenses and face the possibility of the death penalty pursuant to 18 U.S.C. 3591 *et seq.* The Indictment contains allegations of special findings required for the imposition of the death penalty.

To date approximately thirty-five attorneys have been appointed to represent the defendants. Included in this number are eleven attorneys who are “learned in the law applicable to capital cases” pursuant to 18 U.S.C. 3005.

On January 29, 2016, the United States Attorney sent a proposed Protective Order to many of the defense attorneys. Importantly, the proposed Protective Order was not sent to seven of the eleven “learned counsel.” Once notice of the proposed Protective Order spread through the defense group, the defense mobilized to prepare a

coordinated response. With thirty-five attorneys such coordination takes time. Nevertheless, the defense attorneys worked diligently to respond to the Government's proposal as quickly and thoroughly as possible. To that end, through a designee, the defense communicated with the United States Attorney. For example, by email of February 3, 2016 at 1:42 p.m. (not February 4, 2016 at 4:54 p.m. as alleged in the Government's motion) the defense responded to the Government's proposal with specific concerns.

By email on February 4, 2016, through a designee, the defense submitted a proposed Protective Order to the government. In response to the defense submission, by email on February 5, 2016 the United States Attorney indicated that, given the wide differences of opinion regarding the appropriate language for a Protective Order, the government would file a Motion for Protective Order.

On Friday February 5, 2016, at 11:07 a.m., the government filed its Sealed Motion for Protective Order [Doc. 260]. Within hours of the government filing its motion, the Court, *sua sponte*, set this matter for hearing on Monday February 8, 2016, at 11:30 a.m. The Court further ordered that no more than two attorneys could speak for all the defendants. [Doc. 263].

2. Discussion

Included in the panoply of rights guaranteed by the Due Process Clause of the Fifth Amendment are the rights to adequate notice of contemplated action and the right to a hearing, after sufficient notice, at which an opportunity to be heard is afforded.

Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). To proceed to hearing on Monday, February 8, 2016 on the Government's Motion for Protective Order would violate defendants' Constitutional rights.

a. Lack of Notice: As noted above, on Friday February 5, 2016 the government filed its Sealed Motion for Protective Order. That same day, the Court, *sua sponte*, set the matter for hearing on the next day that the Court was in session – Monday February 8, 2016. Without more, this schedule does not provide adequate notice nor adequate time to prepare for the hearing.

Additionally, learned counsel for at least five of the defendants were not receiving notice of filings in this case. These counsel did not receive notice when the government filed its motion or when the Court set the hearing. This lack of proper notice is not inconsequential or trivial. As of Friday evening, some defense attorneys in this case had received NO NOTICE of either the government's motion or of the hearing now scheduled for Monday morning. Only by foraging through the record have learned counsel for some defendants been able to access the actual motion that the Court scheduled to be heard on Monday morning

b. Denial of adequate time to respond: Local Rule 47.8(a) provides that "a response must be served within fourteen (14) days after service of the motion." As noted above, some defense counsel have never been served with the government's motion. Putting that not insignificant fact aside and even assuming that proper service

was accomplished on February 5, 2016, by local rule the defense would have until February 19, 2016 to file a response.

Defendants recognize and appreciate the Court's authority to order expedited briefing. Defendants further acknowledge that, under the circumstances of this case and in light of the nature of the Government's motion, it may be altogether proper to shorten the time within which the defense must file a response. However, while expedited briefing might be appropriate, the defendants object to their opportunity to submit a response being effectively eliminated. To be clear, the defense is amenable to an expedited schedule; however, the defense needs sufficient time to file a thoughtful response and to adequately prepare for any hearing.

c. Additional Issues: Defendants are not clear from the Court's Order [Doc. 263] whether the Court intends for the defendants to be present for any hearing on the Government's Sealed Motion for Protective Order. To the extent the Court intends to conduct this hearing without the defendants being present, we object. The defendants have important interests at stake and the scope and nature of any Protective Order will greatly impact how each individual defendant will be able to participate in his own defense. Accordingly, each defendant should be present for any hearing on these issues and the defendants hereby object to proceeding without their being present.

Further, the defendants object to the Court limiting defense arguments to only two attorneys. Although we are not privy to the Court's thinking, it appears that the Court may believe that the interests of all the defendants are identical. The defendants

understand and appreciate that the Court has no appetite to hear twenty-four attorneys make the same arguments; however, to the extent any party has a position that is different from those of his co-defendants that party should not be silenced by a rule that only two attorneys may speak.

Finally, given the speed with which this matter was scheduled for hearing, it is nearly impossible for defense counsel to make arrangements to be present. Indeed, at the time the Court Order issued [Doc. 263], defense counsel had not yet received Court authorization to travel. Such authorization has now been granted [Doc. 268]; however, there is still not sufficient time to clear calendars and make travel plans in order to be present for hearing on February 8, 2016. Because the Court has a limited number of phone lines available for attorneys to call-in for the hearing, the inability of counsel to make arrangements to be present on February 8, 2016 is not cured by the Court's offer to allow counsel to appear telephonically.

d. Attempt to confer: Undersigned counsel attempted to confer with the Assistant United States Attorneys regarding this motion. Defense counsel sent an email to the Assistant United States Attorneys assigned to this case and has not yet received a response. Because a hearing in this matter is scheduled for tomorrow morning, this motion is filed without consulting with government counsel.

WHEREFORE, based on the foregoing it is respectfully requested that:

- The hearing currently scheduled for Monday February 8, 2016 be vacated;

- The defendants be given until February 12, 2016 to file any response to the Government's Sealed Motion for Protective Order;
- A hearing on the Government's Sealed Motion for Protective Order, and any other matter properly before the Court, be schedule as expeditiously as possible but not before February 16, 2016;
- Arrangements be made for all defendants to be present at such hearing.

DATED: February 7, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 7th day of February, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to the following:

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